

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

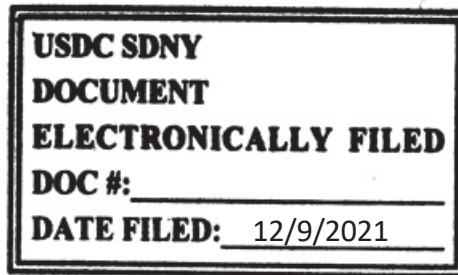
Joseph Pagan, individually and on behalf of
all others similarly situated,

Plaintiff,

-against-

C.I. Lobster Corp. et al.,

Defendants.



1:20-cv-07349 (ALC) (SDA)

ORDER

STEWART D. AARON, UNITED STATES MAGISTRATE JUDGE:

Before the Court is Plaintiff's Letter Motion for sanctions against Defendants for failure to provide Court-ordered discovery. (Letter Motion, ECF No. 72.) In response to Plaintiff's motion, at the Court's direction, Defendants filed a sworn Declaration to show cause why sanctions should not be imposed pursuant to Federal Rule of Civil Procedure 37. (See Order, ECF No. 73; Kataev Decl., ECF No. 74.)

Pursuant to Rule 37(b), "[i]f a party or a party's officer, director, or managing agent . . . fails to obey an order to provide or permit discovery, . . . the court where the action is pending may issue further just orders [of varying degrees of severity]." Fed. R. Civ. P. 37(b)(2)(A). "Instead of or in addition to the orders [referred to] above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(b)(2)(C).

Having reviewed Defendants' response, the Court declines to impose sanctions at this time. The Court agrees with Defendants that Plaintiff's counsel should have met and conferred

with Defendants' counsel prior to filing its November 17, 2021 Letter Motion for discovery. However, Defendants had the opportunity to raise that issue in response and failed to do so. Thereafter, despite a second Order to produce documents, Defendants still failed to respond until faced with the instant motion for sanctions. Defendants provide various reasons for their failure to do so, none of which excuse their noncompliance. At a minimum, Defendants should have sought an extension of time. Nonetheless, the Court, in its discretion, will not impose sanctions at this time. Defendants' counsel is admonished that any further failure to comply with Court Orders will result in the imposition of sanctions. Plaintiff's counsel is admonished that he must meet and confer in good faith prior to raising any discovery disputes with the Court. The Court expects the parties to abide by its Individual Practices and conduct discovery in good faith.

For the foregoing reasons, Plaintiff's Letter Motion is DENIED.

SO ORDERED.

DATED: New York, New York
December 9, 2021



STEWART D. AARON
United States Magistrate Judge